

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MICHAEL JACE,

Plaintiff,

v.

MARGARET LIRONES, et al.,

Defendants.

Case No.: 1:22-cv-00419-NODJ-CDB (PC)

**ORDER DENYING PLAINTIFF'S
MOTION TO APPOINT COUNSEL**

(Doc. 49)

Plaintiff Michael Jace is proceeding pro se and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983.

On December 26, 2023, Plaintiff filed a Motion to Appoint Counsel. (Doc. 49.) For the reasons discussed below, the Court will deny the motion.

I. DISCUSSION

Plaintiff's Motion to Appoint Counsel

Plaintiff states he cannot afford to hire an attorney and has been granted leave to proceed in forma pauperis ("IFP") in this action. (Doc. 49 at 1.) He states, "receiving a stimulus payment of \$1,883.90 ... does not change that status, nor provide him sufficient funds to hire a lawyer." (*Id.*) Plaintiff contends the "issues in this case have merit," and cites to the Court's screening order finding Plaintiff plausibly alleged certain claims. (*Id.* at 1-2.) Further, Plaintiff asserts the issues in this case are complex. In particular, Plaintiff cites to the denial of his access to courts

1 claim, a claim that was dismissed but for which he has sought reconsideration. (*Id.* at 2.) Plaintiff
2 states his “request for reconsideration has not been heard” and believes its determination “is
3 crucial” to his case. (*Id.*) Plaintiff asserts an attorney “would be of great benefit to plaintiff to help
4 him take the proper steps to preserve his right to appeal on this issue,” contending the
5 appointment of counsel serves the interests of the court. (*Id.* at 2-3.) Next, Plaintiff asserts his
6 “imprisonment severely restricts his ability to litigate this case in that it will likely involve
7 substantial investigation and discovery.” (*Id.* at 3.) He contends the case is also likely to turn on
8 credibility determinations and that “it is more likely that the truth will be exposed where both
9 sides are presented by those trained in the presentation of evidence and in cross examination.”
10 (*Id.*) Plaintiff contends Defendant Peterson “has repeatedly claimed plaintiff extorted inmates,” a
11 claim Plaintiff has repeatedly denied. (*Id.*)

12 ***Legal Standards & Analysis***

13 Plaintiffs do not have a constitutional right to appointed counsel in § 1983 actions. *Rand v.*
14 *Rowland*, 113 F.3d 1520, 1525 (9th Cir. 1997), *rev’d in part on other grounds*, 154 F.3d 952, 954
15 n.1 (9th Cir. 1998). Nor can the Court require an attorney to represent a party under 28 U.S.C. §
16 1915(e)(1). *See Mallard v. U.S. Dist. Court*, 490 U.S. 296, 304-05 (1989). However, in
17 “exceptional circumstances,” the Court may request the voluntary assistance of counsel pursuant
18 to section 1915(e)(1). *Rand*, 113 F.3d at 1525.

19 Given that the Court has no reasonable method of securing and compensating counsel, the
20 Court will seek volunteer counsel only in extraordinary cases. In determining whether
21 “exceptional circumstances exist, a district court must evaluate both the likelihood of success on
22 the merits [and] the ability of the [plaintiff] to articulate his claims pro se in light of the
23 complexity of the legal issues involved.” *Rand*, 113 F.3d at 1525 (internal quotation marks &
24 citations omitted).

25 The Court must evaluate the likelihood of Plaintiff’s success on the merits of his claim.
26 Here, while Plaintiff’s complaint was screened as required by 28 U.S.C. § 1983 (*see* Doc. 20) and
27 Defendant Peterson has filed an answer to the complaint, it is premature to determine whether
28 there is a likelihood of success on the merits. *See, e.g., Porter v. Rivas*, No. 1:23-cv-00105-ADA-

1 CDB (PC), 2023 WL 4765492, at *1 (E.D. Cal. July 26, 2023) (“A likelihood of success on the
2 merits determination is not the same as that required at screening; at screening, the Court is tasked
3 with determining whether a plaintiff has sufficiently and plausibly alleged a cause of action or
4 claim entitling the plaintiff to relief. The merits of the allegations are not tested, for the Court is to
5 consider factual allegations to be true for purposes of screening”).

6 Notably too, while Plaintiff’s motion for reconsideration of the dismissal of Defendants
7 Clark and Lirones from the action had not been determined when he filed his motion to appoint
8 counsel on December 26, 2023, the motion has since been decided. On January 3, 2024, Chief
9 District Judge Kimberly J. Mueller issued an Order Re Plaintiff’s Request for Reconsideration,
10 denying his request and finding no highly unusual circumstances warranting reconsideration of
11 the dismissal of Defendants Clark and Lirones from this action. (*See* Doc. 50.) Therefore, to the
12 extent Plaintiff relies upon his pending request for reconsideration to support his motion for the
13 appointment of counsel, that reliance is unpersuasive.

14 The Court must also evaluate Plaintiff’s ability to articulate his claims pro se in light of
15 the complexity of the legal issues involved. Here, the Court notes that Plaintiff’s filings as
16 directed by the Court have been responsive to the Court’s directions and reflect Plaintiff is logical
17 and articulate. (*See* Docs. 13, 14, 19, 21, 43.) The Court finds Plaintiff able to articulate his claim
18 in light of its complexity. More specifically, the Court found Plaintiff plausibly alleged a First
19 Amendment retaliation claim against Defendant Peterson. (*See* Doc. 20 at 10-13.) That claim is
20 not complex. *Bonin v. Vasquez*, 999 F.2d 425, 428–29 (9th Cir. 1993) (while Plaintiff may have
21 limited knowledge of the law, the Court does not find the issues in this case “so complex that due
22 process violations will occur absent the presence of counsel”); *Wilborn v. Escalderon*, 789 F.2d
23 1328, 1331 (9th Cir. 1986) (explaining that “[a]lthough discovery was essential..., the need for
24 such discovery does not necessarily qualify the issues involved as ‘complex’”); *Davis v. Portillo*,
25 No. 1:22-cv-00457 ADA-CDB, 2023 WL 4979965, at *2 (E.D. Cal. Aug. 3, 2023) (retaliation
26 issues are not complex); *Headley v Fisher*, No. 06 Civ. 6331 (PAC) (KNF), 2008 WL 2676601, at
27 *2 (S.D.N.Y. July 7, 2008) (“the factual issues concerning Headley’s retaliation and due process
28 claims is straightforward and not complex”). Notably too, Plaintiff has filed two other motions in

1 this action (Docs. 17 & 38), as well as an interlocutory appeal (Doc. 27). These actions likewise
2 show an ability to articulate his claims pro se. *LaMere v. Risley*, 827 F.2d 622, 626 (9th Cir.
3 1987) (affirming district court's denial of request for appointment of counsel, where pleadings
4 demonstrated petitioner had “a good understanding of the issues and the ability to present
5 forcefully and coherently his contentions”).

6 Next, neither incarceration nor indigency are exceptional circumstances warranting the
7 appointment of counsel. See *Tri v. Gutierrez*, No. 1:22-cv-00836-ADA-SKO (PC), 2023 WL
8 6930783, at *4 (E.D. Cal. Oct. 18, 2023); *Davis*, 2023 WL 4979965, at *2; *Dijkstra v. Campos*,
9 No. 1:21-cv-01223-HBK, 2022 WL 222518, at *1 (E.D. Cal. Jan. 25, 2022) (“Plaintiff’s
10 indigence does not qualify ‘as an exceptional circumstance in a prisoner civil rights case’”);
11 *Gipbsin v. Kernan*, No. 2:12-cv-0556 KJM DB P, 2021 WL 242570, at *2 (E.D. Cal. Jan. 25,
12 2021) (“Plaintiff’s inability to afford counsel has no bearing on either his likelihood of success on
13 the merits or his ability to articulate his claims pro se”); *Callender v. Ramm*, No. 2:16-cv-0694
14 JAM AC P, 2018 WL 6448536, at *3 (E.D. Cal. Dec. 10, 2018); *Montano v. Solomon*, No. 2:07-
15 cv-0800 KJN P, 2010 WL 2403389, at *2 (E.D. Cal. June 11, 2010).

16 The fact an attorney would be better prepared to litigate and try this action, does not
17 amount to an exceptional circumstance warranting the appointment of counsel. See *Rand*, 113
18 F.3d at 1525 (finding no abuse of discretion under 28 U.S.C. § 1915(e) when district court denied
19 appointment of counsel despite fact that pro se prisoner “may well have fared better-particularly
20 in the realm of discovery and the securing of expert testimony”); *Courtney v. Kandel*, No. 2:18-
21 CV-2052-KJM-DMC-P, 2020 WL 1432991, at *1 (E.D. Cal. Mar. 24, 2020) (challenges
22 conducting discovery and preparing for trial “are ordinary for prisoners pursuing civil rights
23 claim” and cannot form the basis for appointment of counsel); *Thornton v. Schwarzenegger*, No.
24 10CV01583 BTM RBB, 2011 WL 90320, at *7 (S.D. Cal. Jan. 11, 2011) (explaining that
25 “[f]actual disputes and anticipated cross-examination of witnesses do not indicate the presence of
26 complex legal issues warranting a finding of exceptional circumstances”).

27 Also, there is little doubt most pro se litigants “find it difficult to articulate [their] claims,”
28 and would be better served with the assistance of counsel. *Wilborn*, 789 F.2d at 1331. For this

1 reason, in the absence of counsel, federal courts employ procedures which are highly protective
2 of a pro se litigant's rights. *See Haines v. Kerner*, 404 U.S. 519, 520 (1972) (holding pro se
3 complaint to less stringent standard) (per curiam). In fact, where a plaintiff appears pro se in a
4 civil rights case, the court must construe the pleadings liberally and afford the plaintiff any
5 benefit of the doubt. *Karim–Panahi v. Los Angeles Police Dep't*, 839 F.2d 621, 623 (9th Cir.
6 1988). The rule of liberal construction is “particularly important in civil rights cases.” *Ferdik v.*
7 *Bonzelet*, 963 F.2d 1258, 1261 (9th Cir. 1992). Thus, where a pro se litigant can “articulate his
8 claims” in light of the relative complexity of the matter, the “exceptional circumstances” which
9 might require the appointment of counsel do not exist. *Wilborn*, 789 F.2d at 1331; accord *Palmer*
10 *v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009).

11 In sum, the Court finds no exceptional circumstances warranting the appointment of
12 counsel in this matter. *Rand*, 113 F.3d at 1525.

13 II. CONCLUSION AND ORDER

14 For the reasons stated above, Plaintiff’s motion to appoint counsel (Doc. 49) is **DENIED**.

15 IT IS SO ORDERED.

16 Dated: January 5, 2024

17 
UNITED STATES MAGISTRATE JUDGE